UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,522	11/24/2003	John M. Monk	10030703-1	1960

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EXAMINER
WIENER, ERIC A

ART UNIT	PAPER NUMBER
2112	

DATE MAILED: 12/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	10/718,522	MONK, JOHN M.
	Examiner	**Art Unit**	
	Eric A. Wiener	2112	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>24 November 2003</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-22</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-22</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>24 November 2003</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>11/24/2003</u>.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

1.   Claims 1 – 22 are pending.

2.   The IDS filed on 11/24/2003 has been considered.

Objections

3.   The specification is objected to, because the application number of the application that is

cross-referenced should be given instead of the attorney docket number of the application.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

4.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

5.   Claims 1, 9, 10, 12, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Richard et al. (US 2001/0056572 A1) in view of Main et al. (US 6,674,724 B1).

As per claim 1, Richard discloses a *system* ([0025], lines 1 – 7) *comprising:*

-   *a user interface* ([0030])

-   *a server communicating with the user interface* ([0031], lines 1 – 4)

> - *at least one distributed computer communicating with the server, wherein a user selects at least one distributed computer for an update via the user interface* ([0031], lines 1 – 4) *and the server communicates with the selected at least one distributed computer to download the update from the server* ([0042], lines 4 – 6) *and executes the update on said at least one distributed computer* ([0043])

Richard does not explicitly disclose that said distributed computer is used as a testing device. However, in an analogous art, Main discloses *a distributed computer communicating with a server and being used as a testing device* (column 2, lines 27 – 38).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to incorporate the teaching of Main with the system of Richard to develop a system for updating distributed computers used as test devices. The modification would be obvious, because computers that are capable of performing the function of communicating with a server over a network in order to be used as testing devices consist of sufficiently similar hardware and software as computers that are capable of performing the function of communicating with a server over a network to receive and install updates to software. Thus, one of ordinary skill in the art would be able to modify a computer intended to perform first said function to also perform second said function and vice versa. Therefore, it would be obvious to combine these functions in order to make it easier to update all of the computers being used as testing devices.

As per claim 9, Richard and Main substantially disclose the system of claim 1. In addition, Richard further discloses that *the user interface comprises a client graphic user interface (GUI)* ([0030]).

As per claim 10, Richard and Main substantially disclose the system of claim 9. In addition, Richard further discloses that *the GUI is a subset of other GUIs* ([0025], lines 7 – 9). The GUI displayed is a subset of other GUIs, because the GUIs are provided on computers utilizing the Windows™ operating systems, which are comprised of GUIs themselves.

As per claim 12, Richard discloses a *method for remotely updating computers* ([0015]), *comprising:*

- *remotely selecting at least one distributed computer for an update process via an interface unit* ([0031], lines 1 – 4)

- *initiating the update process via a server by notifying the selected at least one distributed computer that the update process is required* ([0032], lines 1 – 4)

- *executing the update process on the at least one distributed computer* ([0032], lines 1 – 4)

Richard does not explicitly disclose that said distributed computer is used as a testing device. However, in an analogous art, Main discloses *a distributed computer being used as a testing device* (column 2, lines 27 – 38).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to incorporate the teaching of Main with the method of Richard to develop a method of updating distributed computers used as test devices. The modification would be obvious, because computers that are capable of performing the function of communicating with a server over a network in order to be used as testing devices consist of sufficiently similar hardware and software as computers that are capable of performing the function of communicating with a server over a network to receive and install updates to software. Thus, one of ordinary skill in the

art would be able to modify a computer intended to perform first said function to also perform

second said function and vice versa. Therefore, it would be obvious to combine these functions

in order to make it easier to update all of the computers being used as testing devices.

>   **As per claim 21**, Richard discloses an *apparatus* ([0025], lines 1 – 7) *comprising:*
>
>   - *a graphical user interface* ([0030])
>
>   - *a server communicating with the graphical user interface* ([0031], lines 1 – 4)
>
>   - *at least one distributed computer communicating with the server, wherein a user*
>   *selects at least one distributed computer for an update via the user interface* ([0031],
>   lines 1 – 4) *and the server communicates with the selected at least one distributed*
>   *computer to download the update from the server* ([0042], lines 4 – 6) *and executes*
>   *the update on said at least one distributed computer* ([0043])

Richard does not explicitly disclose that said distributed computer is used as a testing

device to perform testing of a network in accordance with control by an end user via a graphical

user interface.

However, in an analogous art, Main discloses *a distributed computer communicating with*

a server and being used as a testing device to perform testing of a network in accordance with

control by an end user via a graphical user interface (column 2, lines 27 – 38).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of

invention to incorporate the teaching of Main with the apparatus of Richard to develop an

apparatus for updating distributed computers used as test devices. The modification would be

obvious, because computers that are capable of performing the function of communicating with a

server over a network in order to be used as testing devices to perform testing of a network in

accordance with control by an end user via a graphical user interface, consist of sufficiently similar hardware and software as computers that are capable of performing the function of communicating with a server over a network to receive and install updates to software. Thus, one of ordinary skill in the art would be able to modify a computer intended to perform first said function to also perform second said function and vice versa. Therefore, it would be obvious to combine these functions in order to make it easier to update all of the computers being used as testing devices.

6.   Claims 2 – 8, 11, and 13 – 20, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richard et al. (US 2001/0056572 A1) and Main et al. (US 6,674,724 B1) in view of Brown et al. (US 2002/0188701 A1).

As per claim 2, Richard and Main substantially disclose the system of claim 1. They do not explicitly disclose that the selected at least one distributed testing device receives an update notification from the server, and the selected at least one testing device acknowledges the update notification to the server.

However, in an analogous art, Brown discloses *a selected computer receiving an update notification from a server and the selected at least one computer acknowledging the update notification to the server* ([0043], lines 7 – 17), where the examiner has interpreted the system including a process of performing an analysis for updating on the selected system as sufficiently equivalent to notification that an update is needed and interpreted the process of the system sending a status as sufficiently equivalent to acknowledging the update.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of

invention to incorporate the teaching of Brown with the system of Richard and Main to develop a

system for updating distributed computers used as test devices, in which a server communicates

update notification and information to the computers and the computers communicate update

status and information back to the server. One of the problems of the prior art that Richard

intends to overcome is that the Information Technology administrator is never aware of the

precise instant when the installation procedure has been executed (Richard, [0007], lines 11 –

13). Thus, it would be obvious to combine said system with Brown's teaching of communicating

information between the computer and the server for the purpose of alerting the administrator of

the updates to the process and the status of the process of updating. This would benefit the

administrator by allowing the necessary direct and full control over the machines, independent of

the user (Richard, [0008], lines 4 – 5).

As per claim 3, Richard, Main, and Brown substantially disclose the system of claim 2.

In addition, Richard further discloses that *communication between the selected at least one*

computer and the server compromises downloading an installation package from the server to

the selected at least one computer ([0042], lines 4 – 6).

As per claim 4, Richard, Main, and Brown substantially disclose the system of claim 3.

In addition, Brown further discloses that *while downloading the installation package from the*

server to the selected at least one computer, the selected at least one computer communicates a

download status update to the server ([0043], lines 15 – 17).

As per claim 5, Richard, Main, and Brown substantially disclose the system of claim 4.

In addition, Richard further discloses that *after downloading the installation package from the*

server to the selected at least one computer, the selected at least one computer prepares the installation package ([0032], lines 23 – 29).

As per claim 6, Richard, Main, and Brown substantially disclose the system of claim 5. In addition, Brown further discloses that *while preparing the installation package at the selected at least one computer, the selected at least one computer communicates a preparation status update to the server* ([0043], lines 15 – 17).

As per claim 7, Richard, Main, and Brown substantially disclose the system of claim 6. In addition, Richard further discloses that *after preparing the installation package at the selected at least one computer, the selected at least one computer executes the installation package* ([0043]).

As per claim 8, Richard, Main, and Brown substantially disclose the system of claim 7. In addition, Brown further discloses that while *the selected at least one computer executes the installation package, the selected at least one computer communicates an execution status update to the server and the selected at least one computer communicates to the server a completion of the execution of the installation package* ([0043], lines 15 – 17).

As per claim 11, Richard and Main substantially disclose the system of claim 1. They do not explicitly disclose that more than one distributed testing device can be updated in parallel or in serial sequence.

However, in an analogous art, Brown discloses that *more than one distributed computer can be updated in parallel or in serial sequence* ([0043], lines 17 – 34), where the examiner has interpreted the system including the ability of updating multiple computers automatically as

being sufficiently broad enough to cover such systems of updating multiple computers in parallel or serial sequences.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to incorporate the teaching of Brown with the system of Richard and Main to develop a system for updating more than one distributed computer being used as a test device in parallel or serial sequence. One of the functions of Richard's invention is the automation of the updating procedure of computers in a network (Richard, [0004]). Thus, it would be obvious to combine said system with Brown's teaching of automated updating of multiple computers in a network in order to provide the benefit of automating the updating of not just one computer being used as a test device, but all computers being used as test devices in a network.

As per claim 13, Richard and Main substantially disclose the method of claim 12. They do not explicitly disclose that the selected at least one distributed testing device receives a notification of the update process from the server, and sends an acknowledgement of the notification to the server.

However, in an analogous art, Brown discloses *a selected at least one distributed computer receives a notification of the update process from the server, and sends an acknowledgement of the notification to the server* ([0043], lines 7 – 17), where the examiner has interpreted the process of performing an analysis for updating on the selected system as sufficiently equivalent to notification that an update is needed and interpreted the process of the system sending a status as sufficiently equivalent to acknowledging the update.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to incorporate the teaching of Brown with the method of Richard and Main to develop

a method of updating distributed computers used as test devices, in which a server communicates update notification and information to the computers and the computers communicate update status and information back to the server. One of the problems of the prior art that Richard intends to overcome is that the Information Technology administrator is never aware of the precise instant when the installation procedure has been executed (Richard, [0007], lines 11 – 13). Thus, it would be obvious to combine said system with Brown's teaching of communicating information between the computer and the server for the purpose of alerting the administrator of the updates to the process and the status of the process of updating. This would benefit the administrator by allowing the necessary direct and full control over the machines, independent of the user (Richard, [0008], lines 4 – 5).

As per claim 14, Richard, Main, and Brown substantially disclose the method of claim 13. In addition, Richard further discloses that *after receiving a notification of the update process, the selected at least one distributed testing device proceeds to download the update from the server* ([0042], lines 4 – 6).

As per claim 15, Richard, Main, and Brown substantially disclose the method of claim 14. In addition, Brown further discloses that *while downloading the update, the selected at least one computer communicates a status of the download of the update to the server and the status of the download of the update is displayed on the interface unit* ([0043], lines 15 – 17).

As per claim 16, Richard, Main, and Brown substantially disclose the method of claim 15. In addition, Richard further discloses that *after downloading the update, the selected at least one computer prepares the update process* ([0032], lines 23 – 29).

As per claim 17, Richard, Main, and Brown substantially disclose the system of claim 16. In addition, Brown further discloses that *the selected at least one computer communicates a status of the preparation of the update process to the server and the status of the preparation of the update process is displayed on the interface unit* ([0043], lines 15 – 17).

As per claim 18, Richard, Main, and Brown substantially disclose the system of claim 17. In addition, Richard further discloses that *after the preparation of the update process, the selected at least one distributed computer executes the update process* ([0043]).

As per claim 19, Richard, Main, and Brown substantially disclose the system of claim 18. In addition, Brown further discloses that *the selected at least one computer communicates a status of the execution of the update process to the server and status of the execution of the update process is displayed on the interface unit* ([0043], lines 15 – 17).

As per claim 20, Richard and Main substantially disclose the method of claim 12. They do not explicitly disclose that the distributed testing devices can be updated in parallel or in serial sequence.

However, in an analogous art, Brown discloses that *more than one distributed computer can be updated in parallel or in serial sequence* ([0043], lines 17 – 34), where the examiner has interpreted the method of updating multiple computers automatically as being sufficiently broad enough to cover such methods of updating multiple computers in parallel or serial sequences.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to incorporate the teaching of Brown with the method of Richard and Main to develop a method of updating more than one distributed computer being used as a test device in parallel or serial sequence. One of the functions of Richard's invention is the automation of the updating

procedure of computers in a network (Richard, [0004]). Thus, it would be obvious to combine

said system with Brown's teaching of automated updating of multiple computers in a network in

order to provide the benefit of automating the updating of not just one computer being used as a

test device, but all computers being used as test devices in a network.

As per claim 22, Richard discloses a *method for updating computers in a network, comprising:*

- *selecting a computer for an update package in the network via a user interface and submitting an update request to a server* ([0031])

- *downloading to the selected computer the update package from the server* ([0042], lines 4 – 6)

- *preparing the update package for execution at the selected computer after downloading the update package from the server* ([0032], lines 23 – 29)

- *executing the update package at the selected computer after preparing the update package* ([0043])

Richard does not explicitly disclose that said distributed computer is used as a testing

device to perform testing of a network in accordance with control by an end user via a graphical

user interface. Richard also does not explicitly disclose notifying the selected computer via the

server that the update package is required, receiving the notification at the selected computer,

and submitting an acknowledgement to the server. Nor does Richard explicitly disclose notifying

the server of a download status, preparation status, or execution status of the update package.

However, in an analogous art, Main discloses *a distributed computer communicating with*

a server and being used as a testing device to perform testing of a network in accordance with

control by an end user via a graphical user interface (column 2, lines 27 – 38). In another

analogous art, Brown discloses *notifying the selected computer via the server that the update package is required, receiving the notification at the selected computer, and submitting an acknowledgement to the server* ([0043], lines 15 – 17), where the examiner has interpreted the process of performing an analysis for updating on the selected system as sufficiently equivalent to notifying the computer and the computer receiving notification that an update is needed and interpreted the process of the system sending a status as sufficiently equivalent to sending an acknowledgement of the update. Brown also discloses *notifying the server of a download status, preparation status, and execution status of the update package* ([0043], lines 15 – 17).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to incorporate the teachings of Main and Brown with the method of Richard to develop a method of updating distributed computers used as test devices, in which a server communicates update notification and information to said computers and said computers communicate update status and information back to the server. The modification would be obvious, because computers that are capable of performing the function of communicating with a server over a network in order to be used as testing devices to perform testing of a network in accordance with control by an end user via a graphical user interface, consist of sufficiently similar hardware and software as computers that are capable of performing the function of communicating with a server over a network to receive and install updates to software. Thus, one of ordinary skill in the art would be able to modify a computer intended to perform first said function to also perform second said function and vice versa. In addition, one of the problems of the prior art that Richard intends to overcome is that the Information Technology administrator is never aware of the precise instant when the installation procedure has been executed (Richard, [0007], lines 11 – 13)

and it would benefit the administrator to allow the necessary direct and full control over the machines, independent of the user (Richard, [0008], lines 4 – 5). Therefore, it would be obvious to combine these teachings with Richard's method in order to make it easier to update all of the computers being used as testing devices and to be informed of the status of the update process as it is performed.

7.   The prior art made of record and not relied upon is considered pertinent to the applicant's disclosure. The cited documents represent the general state of the art.

Conclusion

8.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric A. Wiener whose telephone number is 571-270-1401. The examiner can normally be reached on Monday through Thursday from 9am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chameli Das, can be reached on 571-272-3696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CHAMELI DAS
SUPERVISORY PATENT EXAMINER

12/6/06